

# **ZONING BOARD OF APPEALS**

## **MINUTES**

### **March 15, 2005**

#### **Members Present**

Maureen Kangas – Vice Chairman  
Ronald Critelli  
MaryAnn Leenig  
Lynne Raver  
Marc Breimer

#### **Members Absent**

Barry Silverstein – Chairman

#### **Others Present**

Janis Gomez, Esq. – ZBA Attorney  
George McGann – Town Building Inspector, Acting Zoning Administrator  
Christopher Colsey – Director of Municipal Development

---

Notice of Appeal Hearing was published in the Beacon Free Press, The Poughkeepsie Journal and the Southern Dutchess News.

Notified of the variance requests were the Town Board, Town Fire/Building Inspector, Town Planning Board, New York State Department of Transportation, Dutchess County Department of Planning, Zoning Administrator and surrounding property owners.

---

**The meeting of the Zoning Board of Appeals was called to order at 7:02p.m. by the Vice-Chairman. She made announcements regarding the no smoking policy and the emergency exits and fire procedures.**

Vice-Chairman Kangas called for comments or corrections to the minutes of the January 18, 2005 meeting. Hearing none she called for a motion to accept the minutes as written.

MaryAnn Leenig made the motion to accept the minutes as written.

Marc Breimer seconded.

Motion Carried

Ronald Critelli - Aye  
MaryAnn Leenig – Aye  
Lynne Raver – Aye  
Maureen Kangas – Aye  
Marc Breimer – Aye

#### **Old Business**

**Continued Public Hearing for:**

Grid Number: 6054-08-910916 & 914920 Address: Meadow Lane, Beacon Hills  
Application Number ZB05-001, submitted by Lori Joseph Builders, is requesting the following variances; 1) front yard setback of 30ft where 35ft is the minimum 2) rear yard setback of 30ft where 40ft is the minimum 3) right yard setback of 15ft where 20ft is the minimum 4) lot size variance of 11,230sq ft where 20,000 is the minimum 5) lot depth of 100ft where 125ft is the minimum required in an R-20 Zoning District.

Vice-Chairman Kangas read the following communications

A letter received by Melvin Glick objecting to the variance.

A Letter received from John Andrews, Town Engineer, citing the following:

1. A retaining wall with no details. The retaining wall is critical to the design of the project, full and complete detail should be required prior to proceeding.
2. Proposed grading to the rear and east of the house is missing.
3. The project sponsor included an email from Lee Felshin from the DC Department of Health. The requirements set forth in the email should be reflected in future submittals.
4. The Town of Fishkill Town Board has not signed off on water service to this lot. The existing pipes in the vicinity may not be able to support development of the lot. Recommended the proposal be referred to Camo Pollution Control for their analyst.
5. The issue of drainage has been addressed with Highway Superintendent, Glen Scofield. His understanding of the improvements to be made to this lot is reflected on the plan. Mr. Scofield is under the impression that the proposed drainage modifications were to extend to Willow Rd and tie into the existing Town facilities. The current proposal is not acceptable to the Highway Superintendent. There are alternatives to the proposal that Mr. Scofield would like to review with with the project sponsor prior to proceeding. The Town Engineer also has serious reservations regarding the manner and method of drainage management on the property. The proposed improvements are an extension of Town facilities. Such extensions typically require a minimum 20ft wide easement centered on the proposed pipe. The depth of the facility and the close proximity to a potentially substantial retaining wall provide long term concerns with respect to the operation and maintenance of both the drainage facilities and the retaining wall.

Mitch Berkey, Povall Engineering, represented the applicant. He advised that Bill Povall presented to the Board at the January meeting. He stated that there was only one member of the public present at that meeting and asked if the Members wanted him to present it again to them. Vice-Chairman Kangas advised that he should.

Mr. Berkey stated that this project will combine two tax parcels on Meadow Lane. The applicant wants to build a two bedroom house on the lots. The combination of the lot will not meet the minimum lot standard for the R-20 Zoning District. He advised that the Board should note that in 2002, the ZBA approved a variance request for building on the parcel for the lot size and depth which they are asking for again. The additional variances they are asking for are the side yard setback of 5ft and a front yard setback of 5ft.

Mr. Berkey advised that the letter from the Town Engineer needs to be addressed and he has had a discussion with Mr. Andrews.

Vice-Chairman Kangas asked why if they were granted variances, why they changed the request. Mr. Berkey advised the Board that it was a different firm and a he does not know if the previous engineer had the Department of Health approval. He stated that the applicant currently does not have DOH approval but, not to put words in his mouth, it is approvable if the applicant is granted the variances. Mr. Berkey stated that the DOH wants something on the plans that states that the house will not be moved and will not give the approval until the variances are granted. Mr. Berkey advised that they can not give that information to the DOH unless the ZBA grants the request. He

advised that the septic design has pushed the house over further and will require the side yard setback variance that was not previously needed. He asked George McGann for verification that approved variances expire after one year. Mr. McGann confirmed that that do.

Lynne Raver asked for verification regarding the Department of Health issue. Vice-Chairman Kangas reiterated that according to Povall Engineering, the DOH will not approval the septic until the variances are granted. Ms. Raver asked if that was unusual.

Vice-Chairman Kangas and MaryAnn Leenig both advised that it was. Mr. Berkey advised that the letter from the DOH was in that packet if they wanted to read it.

Vice-Chairman Kangas called for questions from the Board Members. Marc Breimer asked that if the house exists at its present location would not receive DOH approval. Mr. Berkey did not understand so Mr. Breimer restated that the DOH is requiring the changes in the zoning to approve. Mr. Berkey agreed.

Vice-Chairman Kangas called for additional questions from the Board Members. Hearing none she asked Mr. Berkey if he had anything else to add. Mr. Berkey did not.

Vice-Chairman Kangas called for questions from the floor. Ron Leenig, Garden Place, and also Town Councilman, asked Mr. Berkey when the property was purchased. Mr. Berkey stated that he was the engineer and does not know when the property was purchased. Mr. Leenig advised that the parcel was purchased after the zoning and is a self created hardship. He stated that the original variance has expired and has no bearing on this case. The property has been purchased by a builder that is going to build a spec house and jam the home in there. Mr. Leenig stated that he is against it and so are the neighbors. Vice-Chairman Kangas requested verification that Mr. Leenig was speaking as a citizen that owns a home in Beacon Hills District and not as an elected official. Mr. Leenig confirmed this.

Vice-Chairman Kangas called for additional questions from the Board Members. Hearing none she called for a motion to close or adjourn the Public Hearing.

Mr. Berkey asked if it needed to be adjourned. Janis Gomez advised that until they submit a response to the meeting the public has the right to be heard.

Vice-Chairman Kangas called for a motion to adjourn the Public Hearing.

Ronald Critelli made the motion to adjourn the Public Hearing.

Marc Breimer seconded.

Motion Carried

Ronald Critelli - Aye  
MaryAnn Leenig - Aye  
Lynne Raver - Aye  
Maureen Kangas - Aye  
Marc Breimer - Aye

## **New Business**

### **Appeal Number 1**

Grid Number: 6055-15-749492

Address: 32 Red Schoolhouse Rd

Application Number ZB05-002, submitted by Jean-Pierre Baril, requesting an 18ft variance, creating at 17ft front yard setback where 35ft is the minimum setback in an R-15 Zoning District. Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

No Representation at 1<sup>st</sup> calling

Vice-Chairman Kangas read communications from the following:

Dutchess County Department of Planning citing it as a matter of local concern

Town of Fishkill Planning Department citing the house is pre-existing non-conforming and this would be an expansion of the non-conforming structure. Consideration may be given to utilizing the rear portion of the house. The Planning Board recognizes this as a matter of local jurisdiction.

No Representation at 2<sup>nd</sup> calling

### **Appeal Number 2**

Grid Number: 6156-04-717443

Address: 16 Old Route 9 West

Application Number ZB05-003, submitted by Mega Funworks, Inc., requesting a 4.4ft variance to construct a Sidewinder Attraction at Splash Down Park, with an overall height of 39ft 4in. This property is currently in the R-40 Zoning District under consideration for a GB Zoning District. The maximum height allowance in both R-40 and GB districts is 35ft.

Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

Janis Gomez noted for the record that since the application was submitted, the application has been approved to rezone as a GB District. Ms. Gomez advised that the variance is still needed as the height limit is still 35'.

Vice-Chairman Kangas read the following communications:

Dutchess County Department of Planning citing it as a matter of local concern

Town of Fishkill Planning Department citing the applicant is currently presenting to the Planning Board a site development plan. It was recognized at the October 14, 2004 Planning Board Meeting, that the sidewinder attraction exceeded the height limitation for the current and proposed zoning districts. The applicant was referred to the ZBA at that time. The Planning Board recognizes this as a matter of local concern but recommends input from the ZBA Attorney relative to the afore mentioned concurrent action.

Robert Feldman, Mega Funworks, presented to the Board.

Mr. Feldman advised the Board the Mega Funworks is the corporation that now owns Splashdown Park. It was sold this past year to the Rocking Horse Ranch in Highland. Part of their plan is to revitalize the park. Their biggest problem is the declining attendance due to the fact that the park had not kept up with modern attractions.

Mr. Feldman advised that they are adding two attractions. The first is a wave pool and the second is a sidewinder ride. The sidewinder is similar to a funnel cut in half. You climb to the top and float down on a raft on a film of water. When they designed the ride they recognized the height limitation and they knew that that they would either have to change the design of the ride or apply for a variance. First they tried to change the design of the ride. It turned out not to be feasible because the cost of trying to change the design was too high.

The tower that you climb up is at 35', but the railing that goes around the platform is an additional 4.5' which brought it to 39'. There is no way to do it without the variance.

Mr. Feldman presented the Board a copy of the tower design and indicated the railing at the top.

Vice-Chairman Kangas concluded that Splashdown was in financial difficulty. Mr. Feldman advised that he didn't want to put words into the previous owner's mouth. He stated that the park was for sale and it was declining and Mega Funworks purchased it.

Vice-Chairman Kangas stated one concern she has is that if one variance is granted, will the park turn into a "Playland" or a huge amusement park where this will cause problems on Route 9, or is this just an addition that will enhance a nice theme park.

Mr. Feldman advised to alleviate any concerns; they have not enlarged the park. They made sure that everyone understood that the changes they have made are a balance. Where they have removed part of the parking to install the wave pool, they replaced the parking in another location.

Vice-Chairman Kangas asked if they consider the additions an enhancement. Mr. Feldman agreed that it could be considered an enhancement because they need this to enhance the park in order to get the people to start to come back.

Vice-Chairman Kangas asked Mr. Feldman regarding the traffic driving on Route 9. Mr. Feldman advised that the ride will not be visible from the road. George McGann stated that there is a large rock along Route 9 and most of the park is behind it. Mr. McGann and Mr. Feldman both advised that the DOT is planning to install a traffic light at the intersection.

Mr. Feldman presented another map to the Board. He pointed out the driveway and advised where the sidewinder ride is proposed to be placed. It is in one of the deepest depressed areas of the property.

Janis Gomez reiterated that the 4' railing is essentially a fence to keep safe. Mr. Feldman agreed. Vice-Chairman Kangas verified that it was the safety feature that was causing the need for a variance. Again Mr. Feldman agreed.

Vice-Chairman Kangas called for questions or comments from the floor.

Raymond Tyrrell asked about the large piece of property next to the park. Mr. Feldman advised that the property does not belong to the park. Part of it belongs to the Town of Wappinger, and part of it is in the wetlands. Mr. Feldman gave a brief history advising that the property was one large parcel which was split in two and sold to two private owners. Bill Ross purchased one piece and Mike Cornell purchased the second. Half of the park property is in the wetlands and will never be developed.

Vice-Chairman Kangas called for additional questions or comments from the Board. Hearing none she called for a motion to adjourn or close the Public Hearing.

Ronald Critelli made the motion to close the Public Hearing.

MaryAnn Leenig seconded

Motion Carried

Ronald Critelli - Aye  
MaryAnn Leenig - Aye  
Lynne Raver - Aye  
Maureen Kangas - Aye  
Marc Breimer - Aye

Vice-Chairman Kangas made 3<sup>rd</sup> calling for Appeal Number 1, 32 Red Schoolhouse Rd. Hearing none she requested a motion to adjourn the Public Hearing until next month.

Ronald Critelli made the motion to adjourn the Public Hearing.

MaryAnn Leenig seconded

Motion Carried

Ronald Critelli - Aye  
MaryAnn Leenig - Aye  
Lynne Raver - Aye  
Maureen Kangas - Aye  
Marc Breimer - Aye

Vice-Chairman Kangas announced that there would be a one minute break in the session to add additional chairs to the meeting room. The meeting re-convened at 7:35pm.

### **Appeal Number 3**

Grid Number: 6155-01-349676 & 325682 Address: Route 52 at I-84

Application Number ZB05-004, Submitted by the Athenian I-84 Diner Corp. They are requesting the following variances: 1) a 52ft side yard variance creating at 48ft side yard setback 2) a 20ft rear yard variance creating an 80ft rear yard where 100ft is the minimum and 3) a ½ story variance to create a 3 story hotel where 2 ½ stories is the maximum allowed in at GB Zoning District.

Said request is a violation of Chapter 150-33.B. of the Code of the Town of Fishkill.

Vice-Chairman Kangas reminded the floor that this meeting was for the Zoning Board of Appeals. It was not the Planning Board. If there are problems or requests that have nothing to do with the variances she asked them to refrain from this meeting and attend the Planning Board. Anyone addressing the Board should have their facts correct and not to throw out accusations.

Vice-Chairman Kangas read the following communications:

DC Department of Planning cites it as a matter of local concern.

The Town of Fishkill Planning noted the following: A hotel is allowed in the GB District and a variance was previously granted and a precedent has been set for this property. The proposed structure exceeds the setback and height limitations and the applicant has not demonstrated a necessity of this size. If the variance is granted, such approval should be granted upon the condition of petitioning the Rombout Fire District for inclusion within their ladder district. An email noting that the negative comments received regarding the truckers are not shared by the Members of the ZBA.

From Morris Associates, a letter requesting an official name change from the I-84 Hotel to be recognized as the Quality Inn.

The following letters were submitted and read in to record in objection to the granting of the variances.

1. Green Hills Condominium Association
2. William E. Van Pelt, Van Steuben Rd
3. Fishkill Senior Citizens Group

Vice-Chairman read two petitions objection to the variances being granted.

1. 65 signatures from surrounding neighbors
2. 48 signatures from Green Hills Condominiums

Vice-Chairman read a communication from Police Chief Donald Williams regarding incidents reported by the I-84 Diner in the last three years. Chief Williams noted that the Mr. Trigonis has always been co-operative and there have been no complaints of illicit activity.

Richard Olson, McCabe & Mack, Matthew Horton, Morris Associates and Bob Gray, Morris Associates represented the Applicants.

Mr. Olson advised the Members that a hotel is a permitted use in a GB Zoning District. He reminded the Members that a similar variance was previously granted on March 20, 2001. They are seeking area variances due to the fact that the property narrows as it moves west and a height variance, which does not exceed the height limitation of 35'. The issue is 2 ½ vs 3 stories. The last ZBA Board concluded that the 3 story met the height requirement.

Vice-Chairman Kangas asked for verification what is the definition of 3 stories is. Mr. Olson deferred the question to the engineers. He was only stating it for a fact. The current application is slightly smaller than the original one called for 65 rooms instead of 80. The side yard variance is different because they moved the canopy.

Vice-Chairman Kangas reconfirmed that the reason they were before the Board this time is for the addition of the canopy. Mr. Olson denied this. He stated the reason for the new application is that the original variance was granted in March 2001 and the project was not built at that time and under Town Code the variances expire after one year. Vice-Chairman Kangas restated her comment that the application has been changed. Mr. Olson agreed the change was the canopy over the door.

Mr. Olson turned the presentation over to Matt Horton from Morris Associates to discuss the plans.

Matt Horton presented the plans for the Members. He reconfirmed that they are proposing a 3-story 65 room hotel behind the I-84 Diner. The entrance to the hotel will not be the Diner entrance but the entrance located to the west of the diner. This will separate the traffic from those going to the diner. The project entails a significant reduction in the amount of truck parking and they expect will reduce the number of trucks in the areas which they understand is important to the residents. They will have parking for only 6 trucks where right now they currently can accommodate approximately 30-40 trucks.

Mr. Horton stated that are requesting variances along the east side for 80' and along the west side for 48' due to the canopy. The total distance to the actual building would be 84'. They are the same variances that were requested and granted back in 2001. Vice-Chairman Kangas asked if the canopy would be located on the east or west side. Mr. Horton stated that the canopy will be located on the west side. The moved it to the west side to improve the traffic flow.

Vice-Chairman questioned the traffic flow. She pointed out the traffic light for vehicles exiting I-84 and asked if they were looking into an additional light. She expressed concern for the traffic already there and at the medical building and now another large entryway. Mr. Horton advised that the entrance already exists and is currently serving the diner. Vice-Chairman stated that there would actually be two ways to access the hotel. Mr. Horton stated that the advertisement for the hotel would be at the west entrance and although access can be gained through the east entrance, a patron would then have to travel through the diner's parking lot to get to the hotel. They are proposing additional curbing to limit the access of cars and move them away from the pedestrians. Vice-Chairman Kangas asked if the DOT is considering a traffic light at the entrance. Mr. Horton stated that the DOT has not made a recommendation for a traffic light, but the Town Planning Board did request and they have contacted a traffic engineer to check the site and will prepare a traffic study for the Planning Board.

Vice-Chairman Kangas announced to the floor that many of them may want to speak, but to please limit all questions and thoughts to a couple of minutes.

Raymond Tyrrell asked if there is only room for six truck will the additional trucks park in Forge Brook. Mr. Horton stated that the trucks will not be encouraged to park anywhere else. Mr. Tyrrell asked what would stop the trucks from parking there. Mr. Horton stated that the trucks would pull in, see that there is no parking and move along. Mr. Olson stated that if they park along the

street, they will be subject to ticketing. Vice-Chairman Kangas stated that the residents are concerned that the trucks will park in their neighborhood. Mr. Olson advised that they are reducing the truck parking. The diner is not there strictly for the truckers.

Grace Palladino, Green Hills, requested clarification that the diner will no longer attract truckers driving along I-84. Mr. Olson restated that it will remain a diner but will not have sufficient parking for large numbers of trucks. Ms. Palladino asked if that was for the hotel or the diner. Mr. Olson stated that on the plans there are depicted parking spaces that meet the regulations for the diner and not the hotel.

Doug Murray stated that a majority of the diner's business comes from the truckers. Are they going to cut them off?

Vice-Chairman Kangas reiterated that this is not the Planning Board. This is a Board for variances. They are only here to discuss the variances needed to build the hotel. Concerns need to be addressed to the Planning Board.

Thomas Del Pizzo, Green Hills Condominiums, stated that variances were granted back in 2001. There were never served notice of the Public Hearing. If they had, they would have been at the previous meeting. Several members of the audience agreed. Vice-Chairman Kangas stated that she would have to look into it. She stated that there have been several changes in the Town of Fishkill over the last five years. Mr. Del Pizzo advised that he was notified when the Home Owners Association sent a letter. He did not know that there were variances only that there was a plan to put a hotel in. There were no notices to the Green Hills members and he just wants to have that put on the record. With regards to the plan, Mr. Del Pizzo asked if they were limiting the number truck spaces for the hotel. Mr. Horton stated that there will be no truck parking located in the back by the hotel. The truck parking will be located immediately behind the diner. Mr. Horton pointed the parking area out on the site plan. Mr. Del Pizzo again asked how many places were being designated for truck parking. Mr. Horton answered six spaces. Mr. Del Pizzo stated that it was hard to believe only six spaces. Mr. Del Pizzo asked the Members if traffic was a Planning Board issue. Vice-Chairman Kangas advised that it was and again stated that this meeting was only for variances.

Vice-Chairman Kangas turned the meeting over to Janis Gomez, ZBA Attorney. Ms. Gomez stated that she would check but she believed that the reason Green Hills was not notified in 2001 was the fact that the Zoning Law only required notification within 250 feet. That has since changed to a notification within 500 feet.

Mr. Del Pizzo stated that they can go back now to 2001 to oppose the application. Now they have their attorney presenting stating that the variances were already approved.

Vice-Chairman Kangas agreed that they were previously approved but they have expired. This is a new application.

Richard Gallagher, Putnam Rd, said he can see the diner from his kitchen window. Given the fact that the previous variances have expired and the notification rules have changed, the Board should disregard the fact that the variances were permitted previously. He stated that Route 52 carries a high volume of traffic. During rush hour Route 52 can back up from the Heath Rd traffic light to beyond the deli. As a resident of Putnam Rd, those who are familiar with the area like to detour off of Route 52, drive down Putnam Rd, turn left on Heath Rd and come out at the traffic light. He has seen cars driving on Putnam at 40-50 miles an hour and it will only get worse if the variances are granted. He asked if Fishkill needed another hotel. Mr. Gallagher did some research and stated that there are currently almost 1000 hotel rooms in Fishkill between I-84 and Main St. That is more rooms than the entire corridor from White Plains off of I-684 through Brewster and West of Fishkill. Vice-Chairman Kangas stated that as a resident of the Town of Fishkill she understands the concerns but again this is a matter for the Planning Board. Mr. Horton advised that those concerns will be presented to the Planning Board. Mr. Gallagher asked when the Planning Board Meeting was scheduled. Another resident answered next Thursday.

Donna Maynard, Green Hills Condominium, had an issue with the 52' variance and the 3-stories. Presently she can see the diner from where she lives. The children walk Millholland Dr to go to their bus stop, walk their dogs and play with their friends. By allowing this hotel to be closer to their property line, they will be inviting people to look out the hotel windows who will harm their children. The parking will be right on top of them. There is Megan's Law and there are problems. She stated that the Quality Inn does not have anything to offer that would draw away the business from the Route 9 hotels.

Vice-Chairman Kangas asked Mr. Olson and Mr. Horton had a response. Mr. Horton stated that the building height was not going to exceed the zoning limit. Ms. Maynard stated that the third floor would be above the Millholland road level. She expressed concern for the children that walk to the bus in the dark in the winter. Vice-Chairman Kangas asked for a clarification as to the definition of the 3<sup>rd</sup> story. Mr. Horton stated that the reason for the variance is that the 3 stories will not exceed the zoning limit but instead of having 2 ½ stories with just a roof space it would actually be used for the building. This allows the footprint of the building to be smaller and maintain the same amount of rooms.

Ms. Maynard stated that they need 100 feet. They only have 48 feet. All of the other variances she has heard are for three or four feet, thirty is required they need thirty-five. This applicant doesn't even have half of the required footage.

Bob Gray, Morris Associates, addressed the Board. He restated the definition of the 3-story vs a 2 ½ - story building. He stated that there is another piece of property between the Diner property and Green Hills of Glenham. The Diner property does not adjoin Green Hills of Glenham. Ms. Maynard stated that the site plan does not show the surrounding neighbors. It wasn't offered by the Town for the residents to view.

Theresa Russo asked if the actual size of the building changed from the original proposal. Vice-Chairman Kangas deferred the question to the engineers. Mr. Gray stated that the size of the rooms are different but the footprint is the same. Only the location of the canopy has changed. Ms. Russo again stated that half of the residents were excluded from the previous meeting. Vice-Chairman Kangas interrupted Ms. Russo and stated to the floor that this meeting is only for variances. She stated that she understands their concerns but they will not be making any decisions at this meeting. They are here to listen and will take all of their thoughts, but they will need to go the Planning Board with their concerns.

Harold Ginsberg stated to better understand the desire for the variance he would like to see the site plan. Vice-Chairman Kangas stated that copies of the site plan should be made for the public. Janis Gomez asked if the question is that he wants to see the surrounding neighborhood. Mr. Ginsberg stated he wants to see what adjoins it. Mr. Gray pointed out the surrounding properties to both Mr. Ginsberg and Ms. Russo on the site plan.

Mr. Tyrrell asked if the letters will be sent to the Planning Board. Vice-Chairman Kangas stated that they would.

Thomas Del Pizzo asked for the Vice-Chairman to announce for all present when the next Planning Board Meeting is scheduled. Vice-Chairman Kangas asked the Members present if it was on the agenda for next week's meeting. Dennis Zack, Town Board Member, stated that the meeting will be next Thursday 7:30pm.

Bob Abrosa asked if when consideration is made for a variance, does the Board take into consideration the infrastructure regarding the traffic that everybody is complaining about. He stated that another traffic light can not be added to that street. Vice-Chairman Kangas stated that when a decision is made regarding the granting or denying of a variance, they take into consideration everything that surrounds the variance. She stated that she is also a Fishkill resident and understands their concerns but there are also laws that they have to follow and must consider both side to each issue.

Dennis Koren, Green Hills Condominium, supporting the comments made regarding the 48' setback and listening to the plans, he doesn't see any attempt to reduce the impact to the Green Hills residents, except to have all of the rooms face I-84 and to construct a wall to protect the residents from the transients coming through. He expressed concern that his car would be broken into. He may be retiring this year and is concerned about his property value if he decides to sell. There will only be a few feet of woods and then the dumpsters and this thing with people coming in and out constantly. It would be helpful to see a map that shows exactly where the hotel was going to be placed in relation to Green Hills. He also expressed concern that the applicant will ask for another variance to put an entrance onto Millholland Dr. Vice-Chairman Kangas presented another aerial view for the public display. Mr. Horton advised that he doesn't believe that there is any way to access Millholland Dr. from the hotel. The medical building and its property are located immediately to the west of diner's property.

Grace Palladino pointed to the site plan and stated that access to their property can be made at a certain point. Mr. Horton corrected her and advised that the area in question belongs to the medical building. Ms. Russo asked what the other piece of property was. Mr. Horton advised that was where the hotel is to be located but stated again the medical building's property is between them. Ms. Palladino pointed to the condominium property on the site plan. She advised that as stated by Green Hills of Glenham, how much of their property will be used for the hotel. Mr. Horton requested permission from the Vice-Chairman to address Ms. Palladino directly. Granted. Mr. Horton advised that the hotel only extends a portion of the way back into the property. The back area will remain grass. The building will also be located well below the level of the condominiums. It will be impossible to look out of the hotel windows and see into the level of any of the houses. The maximum height of the building will still be at least ten feet below the level of the houses. Ms. Palladino stated that they can currently see the diner and I-84. Mr. Horton agreed but reminded her that they are looking down. Janis Gomez stated that a comment was made that people from the hotel will be able to see into the houses. That will not happen. Ms. Palladino asked how close will the hotel be to their property line. Mr. Horton stated that from the aerial map just show there will be over 300 feet of separation.

Vice-Chairman Kangas called for additional questions from the audience.

Theresa Russo asked if the police going to increase their patrols to control the truck drivers. Vice-Chairman Kangas stated that she did not know that information. Ms. Russo asked if there are any plans to put up sound barrier walls on both sides of the hotel. The Vice-Chairman again stated that the concern is for variances and they did not have that kind of information.

Raymond Lane asked that as a citizen that he has a right to demand that the police ticket a 7<sup>th</sup> truck. The Vice-Chairman agreed they could be ticketed.

Ms. Russo asked what would stop a truck from parking on Heath Rd at 3:00am to run into the diner. The Vice-Chairman again stated that questions were being raised that belong to the Planning Board or can be brought to the Town Supervisor.

Joe Salastrini stated for clarification when it comes to ticketing vehicles that the police have no jurisdiction on private property. They patrol for trouble. They do not patrol for cars. Janis Gomez stated that the Town's Zoning Enforcement Officer have the authority to ensure that the property is being used in accordance with the site plan and therefore even if it is not the police the Town would have the power to enforce that only the number of trucks permitted will be parked there. Mr. Salastrini stated that a comment was made that the police will ticket. The Vice-Chairman agreed that private property is different but they will ticket if it is an illegally parked vehicle. The Vice-Chairman requested Dennis Zack address this issue. Councilman Zack stated that if there is a letter on file from a commercial establishment requesting that traffic violation be summoned, it will be taken care of. He stated that he believed that the I-84 Diner does have a letter on file.

Ms. Russo raised the question again regarding trucks parking in the Heath Rd area at 3:00am. Councilman Zack advised that there are no commercial vehicles allowed on Town roads at night so that would be a violation, even to park for a minute.

Mr. Salastrini asked if there was anything to prevent them from parking on the road during the day. Councilman Zack said no unless it is posted.

Grace Palladino stated that some of the residents received notification regarding the Planning Board Meeting, but as with this meeting, not everyone was notified. The Vice-Chairman again stated that it was a Planning Board issue. She again stated that the Planning Board will be meeting on Thursday, March 24 at 7pm. The concerns heard tonight need to be addressed to the Planning Board. Everything is being taken into consideration and nothing will be decided tonight.

Tom Chang, Forge Brook, asked if it would be possible to require the applicant to purchase additional land to offset the setback. Vice-Chairman Kangas stated that the Board would not know what land is available for sale or what more they purchase. Mr. Chang stated that if it was not possible, the variances should be denied.

Jim Mishk, Putnam Rd, asked if there are going to be conference rooms built into the hotel. Mr. Horton stated that there would not be any conference rooms. Vice-Chairman Kangas stated that it would be a limited service hotel. Grace Palladino asked what was meant by limited services. The Vice-Chairman advised that it means that it is not full service with conference rooms, a dining room or restaurant. Bob Gray confirmed that it will be limited with 65 rooms and an area for a continental breakfast. In regards to the parking, they are showing 6 spaces, and they intend for that to be a condition of the site plan approval. As the attorney pointed out, it can be enforced. Right now when the trucks come in and there is no room for them to park they circle around and leave. This is what is going to happen now. When those six spaces are full they will come and turn around and leave, or they will talk to each other on their CB radios and know that there are no spots. That's the way it works.

Twinetta Brenson, Millholland Dr, asked since it was a limited service hotel, was it an hourly rate or a nightly rate. Vice-Chairman Kangas advised her that she was out of line. A commotion rose in the room and the Vice-Chairman brought order back and again stated that with no disrespect to Ms. Brenson, this was a Zoning Board of Appeals, and the comment was disrespectful and unnecessary. Was Ms. Brenson planning on asking the owners or every proposed hotel if they were going to offer hourly rates? Limited service only means that there is no restaurant or conference rooms. It will be strictly for overnight guests.

Yolanda Giscillis, advised that she has spoken with Supervisor Joan Pagones and that there is a condo unit going to be built very shortly on Route 52 just past the police station. How much are we getting into the area? Once again the Vice-Chairman reminded the audience that they need to attend the Planning Board meeting. The ZBA cannot make any changes or any plans for the Town of Fishkill. The ZBA can only asses the variances that the applicants are requesting. Ms. Giscillis asked if the variance for the three stories is denied and the limit is 2 ½ will they still build the hotel. The Vice-Chairman deferred the question to the engineer. Matt Horton again explained that there will be no noticeable difference except that the third story will be used. In a 2 ½ story building, the third story is just dead space. Ms. Giscillis did not understand the difference between 2 ½ and 3 stories. Janis Gomez advised that it was not a height issue. Bob Gray requested permission to address the question. Vice-Chairman Kangas approved. Mr. Gray compared it to a Cape Cod home. It is a 1 ½ story house even though there are 2 stories that are used. That is the difference. As questions were being raised, Mr. Gray advised that they will need to address the Board and he will respond.

The Vice-Chairman requested George McGann to speak. Mr. McGann advised the zoning code states that a 2 ½ and 3 story building are the same thing. The difference is the usable space. In a half story building the area under the roof is generally half the area of the floor below it. In the building code that floor would be considered a story so the example of the Cape Cod, would be in the building code a two story building. In the zoning code and the assessment rolls it is a story and a half. The height generally is no different when you're looking at 35' as a maximum height. The variance is not on the dimensional characteristics, it's on the descriptive nature of the third floor.

Janis Gomez asked if there is only a 2 ½ story building could rooms be placed on that third floor. Both George McGann and Bob Gray answered yes. Ms. Giscillis again asked if they would go ahead with their plans if they had to keep the third story a half story. Mr. Gray advised that he is not building the hotel. It would not be his decision.

Vice-Chairman Kangas asked if there were any new variance comments.

Raymond Lane repeated that whatever variances were granted is null and void now. What was the variance prior? The Vice-Chairman asked if Mr. Lane was referring to the stories again. Mr. Lane confirmed that he was. The Vice-Chairman advised that the request was the same as before. Mr. Lane asked about the footage. Vice-Chairman Kangas stated that the only difference between this request and the previous one is the canopy.

Theresa Russo asked if the entrance of the building will be facing Millholland Dr. Mr. Gray advised that the entrance will be on the west side. The Vice-Chairman confirmed that it will face Millholland Dr. Mr. Gray stated that it will face the medical arts building. Ms. Russo said she finds it funny that in 2001 there was nobody at the meeting, but in 2005 there are 100 people. They must have changed their minds. They approved it then and now their fighting it. Isn't that odd? Janis Gomez replied that it is not what happened. The applicant was granted a variance in 2001. Under the Town's Zoning Code, if building does not begin within one year the variance expires. For whatever reason they had they chose not to build at that time. The variances expired and they have to start all over again and that is the reason for the meeting tonight.

Donna Maynard stated that there is a 400' difference and more people are being affected. Janis Gomez what the 400' difference she was referring to. Ms. Maynard stated that in 2001 notification was only sent to those within 100'. MaryAnn stated that she was referring to the notices that are sent out for the Public Hearing. Janis Gomez requested the file from the previous Public Hearing. Ms. Gomez advised that she misunderstood her question and agreed that more people were notified for this meeting. Ms. Maynard stated that the only reason more people were notified was because the woman how lives on the corner made 200 copies and distributed them along Kip Dr. She did not receive a notice from the Town, she received a copy from her. Janis Gomez stated that under the Town's notice requirement, we are required to notify people within 500' of the property. If you live in the condominium complex and your unit is not within the 500', you were not notified because the Town is not required to notify you. Ms. Gomez advised that in addition there is a notification published in the newspaper as required.

Raymond Tyrrell added that he looked at the map that depicts the notification range and it falls short of Kip Rd. It covers most of Putnam Rd, and a portion of Heath. Ms. Russo stated that the only entrance in is through Heath and one other off of Old Glenham Rd. The six roads that are there can only be accessed only from Heath or Old Glenham.

Tom Del Pizzo asked if Green Hills wasn't in existence and was just barren property owned by one person, would that person be required to be notified. Janis Gomez confirmed that if it was owned by one person and a portion fell within the 500', then yes. Mr. Del Pizzo then stated that all of Green Hills should have been notified because it is collectively owned property. You need to go by the property owners not just the home owners. Nancy Lecker advised that it is what is registered with the County. You live in a particular unit. Who ever lives in 10F, their name is registered. The other 100 people are not registered under 10F. Mr. Del Pizzo stated the attorney just advised him that the property owners must be notified, if there are no houses on it, if nobody lives there, but they own the property. Ms. Gomez advised that she understood his dispute and will check into whether the notification was proper.

Grace Palladino requested that for the next meeting, that the owners, attorneys and architects provide elevation plans and what the hotel is to look like. That will clear up some of the questions regarding the 2 ½ and 3 stories. Vice-Chairman asked the Matt Horton and Bob Gray who would have to be contacted regarding the request. Mr. Gray replied that they already made that presentation to the Planning Board. Since the architecture wasn't a variance issue, they did not

prepare that for this meeting. Vice-Chairman Kangas asked if it will be part of their presentation next Thursday. Mr. Gray confirmed that it would be.

Ms. Palladino asked if was a way to see an actual map that would show where the hotel is going to be. Mr. Gray replied that everything is on file at the Planning Department. Residents can look at the file and have copies made if necessary. Mr. Gray advised that they will co-operate with the Planning Department if they need them to make copies.

Ms. Palladino asked regarding the Planning Board Member that will be making the decision, how many of them live within the 500' notification. Another member of the audience stated that there is a least one person. Ms. Palladino stated that she wants to know what his views are on this. Vice-Chairman Kangas stated that she may find out her answer at the meeting next Thursday.

Raymond Tyrrell stated that he thought that the only variance that was granted in 1991 was to increase the parking lot when the owner purchased the ice cream stand. Janis Gomez advised him that the discussion was regarding the variances in 2001.

Doug Murray requested information regarding the elevation map. He asked if they will have the elevation with where Millholland Dr. is and where the hotel will be and the height if the hotel. Vice-Chairman Kangas deferred the question to the engineer. Matt Horton advised that their presentation just showed the existing diner and the proposed hotel, but they can show the grading on the area west and behind the hotel to see the height differential.

Luis Cordero Green Hills, stated with all of the construction currently being done, how much more congested can it get. What is really needed in the area are more schools. It is not as attractive as it was even five years ago. For people who bought here, it was a good investment, their property values are going to suffer. Vice-Chairman Kangas stated that the concerns are well taken.

Councilman Ronald Leenig stated that in response to the questions there was a Comprehensive Plan Committee Meeting in session right now that would appreciate everything that was being said.

Vice-Chairman Kangas announced that nothing new is being offered and requested a motion to close the Public Hearing

MaryAnn Leenig made the motion to adjourn the Public Hearing.

Lynne Raver seconded

Motion Carried

Ronald Critelli - Aye  
MaryAnn Leenig - Aye  
Lynne Raver - Aye  
Maureen Kangas - Aye  
Marc Breimer - Aye

**MaryAnn Leenig made the motion to adjourn.**

**Marc Breimer seconded.**

**Motion carried.**

**Meeting adjourned at 8:55pm.**

Respectfully submitted,

Nancy Fitzgerald-Lecker

ZBA Clerk